

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 99-19-P-H
)	
CHRISTOPHER MARTIN FIORE,)	
)	
Defendant)	

RECOMMENDED DECISION ON MOTION TO SUPPRESS

Christopher Martin Fiore, charged with violating 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(1)(B) and 18 U.S.C. §§ 2 and 371 through the knowing transport, sale, receipt, acquisition and purchase in interstate commerce of elvers known to have been illegally harvested in Massachusetts, and conspiracy to commit the same, seeks the suppression of statements made to law enforcement officers on May 13, 1998, December 2, 1998 and March 2, 1999. Indictment (Docket No. 4); Motion to Suppress, etc. (Docket No. 7).¹ An evidentiary hearing was held on June 1, 1999 at which the defendant appeared with counsel. At the hearing, defense counsel clarified that the defendant moves to suppress solely on grounds of failure to give warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966), in circumstances amounting to custodial interrogation; there is no issue concerning the voluntariness of the statements made.

¹Elvers are American eels that are in a transparent, or “glass,” stage of their life cycle. Indictment ¶ 1.

I recommend that the following findings of fact be adopted and that the motion to suppress be denied.

I. Proposed Findings of Fact

On the afternoon of May 13, 1998 three men drove to the defendant's home in Waldoboro, Maine: Christopher Dowd, special agent, United States Fish & Wildlife Service ("USF&W"), Richard Stott, a USF&W officer, and Michael Forgues, a Maine Marine Patrol officer. Dowd and Stott were dressed casually, although they carried firearms beneath their jackets, and Forgues was dressed in uniform and carried a visible firearm. The defendant, a commercial fisherman who lived on the second floor of the multifamily home, expected the officers'² arrival, having been forewarned by a phone caller the previous evening and by his mother that day that officers were looking for him.

Upon seeing the officers drive up the defendant proceeded down his outside landing stairs to the driveway, meeting the officers at the bottom of the stairs. The officers (none of whom the defendant previously had met) identified themselves and explained that they were investigating possible violations of wildlife laws and wanted to speak to him. The defendant told the officers that he did not know whether he wanted to speak to them. One of the officers commented that the officers had already spoken to several people regarding elver-fishing activities in Chatham, Massachusetts in 1997 and wanted to provide the defendant with an opportunity to tell his side of the story. The defendant responded that he would not reveal the names of any fishermen because he wanted to stay in the elver business. One of the officers suggested that the group adjourn to a nearby picnic table in the defendant's yard to discuss the matter further. Dowd and Forgues sat on

²For ease of reference, I shall refer to the men present during the three dates in question as "officers," regardless of their actual titles.

one side of the picnic table across from the defendant and Stott, who sat closest to the driveway. The officers questioned the defendant for about thirty minutes, during which time the defendant stood up and moved around while he talked. Other than perhaps standing up to stretch, the officers remained seated throughout the interview.³ The defendant at one point stated that he kept good records regarding his elver business; when asked to provide those records to the officers, he refused.

The defendant noticed that Dowd, in addition to Forgues, was armed. None of the officers read the defendant his *Miranda* rights during the interview; nor did any officer advise the defendant that he did not have to talk to them or that he was free to ask them to leave at any time. On the other hand, none of the officers suggested that the defendant was in custody, threatened him, raised his voice to the defendant, asked him to remain seated at the picnic table or used any physical restraint against him. When at various points the defendant refused a request (such as the request for the business records), none of the officers pressed it further. The defendant did not appear to the officers to be under the influence of any substance or medication, nor to have any difficulty comprehending the officers' questions. Upon parting, the officers urged the defendant to contact them if he wished to talk further. The defendant indicated that if he talked to anyone it would be Maine Marine Patrol officer Rene Cloutier.

On December 2, 1998 at approximately 5:20 p.m. Dowd and Stott returned to the defendant's home together with Cloutier and Ronald Dolliver, also a Maine Marine Patrol officer. Both Cloutier and Dolliver were in uniform. The officers, who had not notified the defendant in advance of the visit, knocked on the door and found the defendant at home with a friend. Dowd asked if the officers

³In this regard, I find entirely credible the testimony of Dowd and Forgues and not credible the testimonial statement of the defendant that Forgues stood behind him during the interview at the picnic table and that he felt intimidated by Forgues' presence there.

could come in. The defendant, who remarked that he remembered Dowd and Stott, stated that the officers could enter. The officers proceeded to the kitchen, where they hand-delivered a so-called “target letter” from Assistant United States Attorney William H. Browder, Jr.⁴ The defendant expressed reluctance to read the target letter, whereupon Dowd commented that were he to do so, the officers could answer any questions he might have. The defendant then looked the letter over hastily.⁵ When he finished, he asked what he was being charged with, and Dowd explained that it was a violation of the Lacey Act for the interstate purchase of illegally taken elvers. Although this explanation was inaccurate inasmuch as the defendant was not then charged with a crime, Dowd went on to explain that the United States Attorney’s Office was considering indicting the defendant and that he should get an attorney. Dolliver also advised the defendant to take advantage of an offer, contained in the letter, to get in touch with the United States Attorney’s Office. After reading the letter the defendant became agitated, complained that he was being picked on and made other statements. However, when the officers directly asked him whether he was willing to make any statements, he said he was not. The officers then left the home.

⁴Browder, who appeared on behalf of the government at the suppression hearing, explained that the United States Attorney’s Office chose to arrange for the hand-delivery of the “target letter” in the manner described out of concern that the defendant would not accept registered mail and because the hand delivery would provide an opportunity to explain to the defendant what the letter meant.

⁵The “target letter,” admitted as Government Exhibit #3 at the suppression hearing, states in part, “I am writing to inform you that we are currently considering this case for presentation to the federal grand jury sitting in Portland, Maine for indictment. . . . [U]nder the circumstances of your case, it appears appropriate to notify you of the status of this matter before deciding whether to seek an indictment. This notice will allow you an opportunity, through legal counsel, to discuss the status and possible disposition of this matter with our office prior to any grand jury proceedings.” The letter, which urged the defendant to obtain an attorney, advised that if he could not afford an attorney he might be eligible to have one appointed.

During the approximately twenty-minute visit, none of the officers read the defendant his *Miranda* rights nor advised him that he did not have to talk to them. However, none of the officers suggested that the defendant was in custody, threatened him, raised his voice to the defendant or used any physical restraint against him. The defendant once again did not appear to the officers to be under the influence of any substance or medication, nor to have any difficulty comprehending what was going on, apart from initial confusion regarding the meaning of the “target letter.” The defendant appeared to have no reservations letting the officers into his home.

On March 2, 1999 at approximately 12:35 p.m. a third group of officers paid an unannounced visit to Fiore’s home. On this occasion Dowd and Forgues were accompanied by Kevin O’Brien, a USF&W special agent, and William Marr, a deputy United States marshal. Forgues was in uniform. The officers knocked on the door and explained to the defendant, who was at home with a friend, that they had a warrant for his arrest. The defendant initially resisted arrest; however, after Marr succeeded in handcuffing him, Dowd read him his *Miranda* rights from a card. Dowd asked if the defendant understood those rights, and the defendant said that he did. The officers did not discuss the substance of the defendant’s case prior to reading him his *Miranda* rights. The defendant informed the officers that he did not want to help them, and accordingly they asked him no questions concerning the substance of his case throughout transport to the United States Marshal’s Office in Portland and booking. While the defendant made some remarks and asked some questions concerning his case, none of these comments was elicited by a question from any of the officers. At one point, Dowd reminded the defendant that he had stated he did not want to talk to the officers.

The defendant, who has an 11th-grade education, has a criminal record in both Maine and Arizona. His Maine criminal record reveals convictions for theft in 1982, disorderly conduct in

1983, 1984, 1993 and 1996 and criminal trespass in 1990, and his Arizona criminal record reveals a conviction for possession of drug paraphernalia in 1988. During the latter proceeding, a court advised the defendant of his rights in the context of a change of plea.

II. Discussion

The parties do not dispute the nature of the legal framework applicable to this case. The obligation of an officer to administer *Miranda* warnings attaches “only where there has been such a restriction on a person’s freedom as to render him ‘in custody.’” *Stansbury v. California*, 511 U.S. 318, 322 (1994) (citations and internal quotation marks omitted). Whether a person can be considered to have been in custody depends on all of the circumstances surrounding the interrogation, but “the ultimate inquiry is simply whether there [was] a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” *Id.* (citation omitted). “[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.” *Id.* at 323. *See also United States v. Quinn*, 815 F.2d 153, 157 (1st Cir. 1987) (relevant inquiry “is how a reasonable man in the suspect’s position would have understood his situation”) (citation and internal quotation marks omitted).

Although the defendant testified at his suppression hearing that he felt intimidated by the officers’ presence and constrained to comply with their directions, I find that a reasonable person in the defendant’s position on May 13, 1998 and December 2, 1998 would not have understood himself to be either under arrest or restrained in freedom of movement to a degree associated with formal arrest. On neither occasion was the defendant placed under arrest, threatened or physically restrained. He did not appear to be under the influence or otherwise impaired. The defendant, who

was in familiar surroundings, on both occasions demonstrated a significant degree of control of his situation, despite the presence of three or four officers, some in uniform and some possessing firearms. During the May 13 interview, for example, the defendant knew the officers were coming and exited his home to greet them. He initially weighed whether to talk to them at all. During the conversation, he got up from the picnic table and walked around. He declined to name names or to provide business records. He stated that he would talk further only to Cloutier. Although at the December 2 meeting the defendant understandably was initially confused by the “target letter” and Dowd’s response that the defendant was charged with a violation of the Lacey Act, the officers quickly clarified that they were not there to arrest the defendant. The defendant refused to answer any questions or provide further information, whereupon the officers left. The defendant, moreover, while not highly educated, was familiar with the concept of a criminal defendant’s legal rights by virtue of his seven previous criminal convictions.

In circumstances in which officers made no threats, displayed no weapons and exerted no physical restraint upon suspects, and in which one suspect declined in some respects to cooperate with officers’ requests, the First Circuit found that a reasonable person in the suspects’ shoes would not have understood him or herself to be in custody. *Quinn*, 815 F.2d at 157-59, 161. The First Circuit observed that “the psychological pressure experienced when confronted at the scene by police is not the same as ‘restraints comparable to those of a formal arrest.’” *Id.* at 161 (citation omitted).

Turning, finally, to the officers’ conduct on March 2, 1999 there is simply no evidence that any interrogation or questioning whatsoever was undertaken prior to the administration of *Miranda* warnings. Thus, there was no conduct even colorably falling within the ambit of custodial interrogation.

III. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to suppress evidence be **DENIED.**

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 3rd day of June, 1999.

*David M. Cohen
United States Magistrate Judge*